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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/788,776

02/27/2004

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22862 7590 12/11/2008  
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EXAMINER

WEIDNER, TIMOTHY J

ART UNIT

PAPER NUMBER

2419

MAIL DATE

DELIVERY MODE

12/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/788,776	<b>Applicant(s)</b> WIEGAND, THOMAS	
	<b>Examiner</b> Timothy J. Weidner	<b>Art Unit</b> 2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 18-26, 28, 29 and 31-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 18-26, 28, 29 and 31-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Claims 29 and 31 are currently amended.

Claims 12-17, 27, 30, and 38 are cancelled.

Claims 1-11, 18-26, 28, 29, and 31-37 are pending.

### ***Response to Arguments***

Applicant's arguments/amendments, see page 12, filed 8/27/08, with respect to the rejection(s) of claim(s) 29, 31, and 38 under 35 USC 101 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, based upon the amendments, a new ground(s) of rejection is made because "computer readable medium" includes "data carrier" as defined by the specification (page 41, lines 1-3).

Applicant's arguments, see pages 12-13, filed 8/27/08, with respect to the rejection(s) of claim(s) 1-38 under 35 USC 112 have been fully considered but they are not persuasive. Arguments do not appear to address the language or limitations of the claims that were originally pointed out in the rejection, and do not clarify said limitations. Instead, the arguments appear to be a summary of the proposed invention.

To reiterate, the rejection under 35 USC 112 refers to the lack of clarity regarding the last 3-4 lines of each independent claim which state "a data packet of a first data packet type precedes a data packet of a second data packet type that, in accordance with the predetermined order, precedes the first data packet type". It is unclear what precedes what because in the first half of the limitation there is an order defined

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between packets, and in the second half of the limitation, "precedes the first data packet type" appears to involve an order among packet types. There should be either a definition of the order of packets or the order of packet types, but not both unless it is definitive and clear. Therefore, the rejection is maintained.

### ***Claim Objections***

Claim 25 is objected to because of the following informalities: there is a failure to remove underlining from a previous amendment (line 3). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 29 and 31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 29 and 31, the claim is directed to a computer readable medium including a data carrier as defined by the specification (page 41, lines 1-3), generally defined including electromagnetic carrier waves, which is a form of energy, and does not fall into one of the four statutory categories of invention, i.e. it is not a process, machine, manufacture, or composition of matter.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform to current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Regarding claim 1, in lines 19-23 for example, "a data packet of a first data packet type precedes a data packet of a second data packet type that, in accordance with the predetermined order, precedes the first data packet type" is not clear because the first data packet precedes the second data packet, while at the same time the second data packet precedes the first data packet type. It is unclear what is preceding what, whether a data packet or a data packet type, and whether the first precedes the second or vice versa. Further, it is unclear whether a data packet precedes a data packet, or a type precedes a type. All the independent claims have similar deficiencies.

Regarding claim 20, in lines 9-11, the limitations "the preceding data packet" and "the current data packet" lack antecedent basis in the claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Weidner whose telephone number is (571) 270-1825. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy J Weidner/  
Examiner, Art Unit 2419

/Edan Orgad/  
Supervisory Patent Examiner, Art Unit 2419